CELESTE C. GRYNBERG

IBLA 82-804 Decided July 18, 1983

Appeal from decision of Wyoming State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease in part. W-44262.

Decision set aside and case referred to the Hearings Division.

1. Administrative Practice -- Evidence: Admissibility -- Hearings -- Oil and Gas Leases: Known Geologic Structure -- Rules of Practice: Appeals: Hearings -- Rules of Practice: Evidence

   Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

2. Estoppel -- Notice: Generally

   Estoppel will not lie against the Government where the record establishes that a party is properly chargeable with knowledge of the true facts, regardless of whether those facts were actually known by that party.

APPEARANCES: Philip G. Dufford, Esq., and Phillip P. Barker, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Celeste C. Grynberg has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 13, 1982, canceling her noncompetitive oil and gas lease, W-44262, in part.

Effective April 1, 1974, a noncompetitive oil and gas lease was issued to Jack J. Grynberg, the successful drawee in the January 1974 simultaneous oil and gas lease drawing. Appellant is the assignee of the lease, under an assignment approved effective March 1, 1980. In its April 1982 decision, BLM canceled the lease to the extent it included land within an undefined extension of the Torchlight field known geologic structure (KGS), which had been made effective January 12, 1970. The affected land consists of 40 acres situated in the SW 1/4 NW 1/4 sec. 29, T. 51 N., R. 92 W., sixth principal meridian, Wyoming.

In her statement of reasons for appeal, appellant contended that the SW 1/4 NW 1/4 of sec. 29 should not have been included in the Torchlight field KGS, based on certain evidence available to the Geological Survey (Survey) 1/ in 1970. Appellant premised this contention, first, on the "existence of separate fields within the KGS area." Appellant noted that the #1-29 Barnett Serio Exploration -- Federal well located a mile to the southeast from the Torchlight field, which was drilled in January 1970 and produced oil until its shut-in in 1979, was included by the Wyoming Oil and Gas Conservation Commission in the Flashlight field. The #1-29 well is located in the NW 1/4 SW 1/4 sec. 29, T. 51 N., R. 92 W., sixth principal meridian, Wyoming.

Appellant also based her contention that the KGS was erroneous on the "existence of non-productive wells which were drilled to the same level of the anticline as the level which underlies the SW 1/4 NW 1/4 of section 29." The #1-29 well produced from the Phosphoria, Tensleep, and Madison formations. Appellant argued that a well drilled in the SW 1/4 NW 1/4 of sec. 29 by William F. Sheehan, Jr., in December 1961 and confirmed by the #2-29 Barnett Serio Exploration -- Federal well drilled in March 1970 in the NE 1/4 SW 1/4 of sec. 29 indicates that the SW 1/4 NW 1/4 of sec. 29 will be lower structurally than the #1-29 well. Both the #2-29 and the 1961 wells are lower on the Muddy formation than is the #1-29, and appellant argues that it could be expected that the deeper formations will also be lower structurally. The #2-29 well was completed as a dry hole, testing water in the Tensleep and Madison formations, which appellant alleges, are the "main producing reservoirs" of the Torchlight field. The 1961 well was only drilled to the Muddy formation.

In the alternative, appellant argued that BLM should be estopped from canceling part of her oil and gas lease. Appellant asserted that BLM's issuance of the lease and acceptance of rental payments, despite the fact that it "knew of the KGS determination" prior to the issuance, amounts to "affirmative misconduct." Appellant stated that:

> She had no knowledge of the inclusion of part of the lease in the Torchlight KGS and for the past eight years has relied on the conduct of the Bureau of Land Management and has proceeded with

1/ By Secretarial Order No. 3071 (47 FR 4751 (Feb. 2, 1982)), the Secretary created the Minerals Management Service to, inter alia, take over the functions of the Conservation Division, Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the Minerals Management Service and the Bureau of Land Management within BLM. Further reference in the decision will be to Survey, since the Conservation Division, Survey, was in existence during the relevant determination.

development of the lease, making contractual arrangements to develop the same land which the Bureau of Land Management now seeks to exclude from her lease. [2/]

Appellant requested a hearing before an Administrative Law Judge.

By order of March 1, 1983, this Board noted that the case file contained no documentation to support Survey's decision concerning the KGS determination. In addition, the Board pointed out that "there is no explanation relating to why the parcel was posted to the simultaneous list in January, 1974, nor why the specific lease was clearlisted by Geological Survey prior to lease issuance." The Board directed BLM to supply such documentation "as existed prior to April 1, 1974" which would support the KGS determination as well as an explanation concerning the circumstances surrounding lease issuance.

On April 18, 1983, BLM responded in relevant part:

> You have requested further information regarding the appeal on the above subject.
>
> The only documentation in this office pertaining to this lease and the KGS land, is the attached copy of the February 6, 1970 notice of lands to be included in the known geologic structure of the Torchlight Field, effective January 12, 1970.
>
> As to why these lands were posted to our January 1974 Notice of Lands Available list, we have no explanation. It is possible that the plat pertaining to the land in question was incorrect at that time and did not show the land as being in this known geologic structure. Since the plat copy showing the status of lands at that time is in the case file, we cannot check that premise.
>
> We have checked with the Geological Survey office in Casper as to the reason the complete lease was clearlisted, and they have no explanation. Apparently, this 40 acres was overlooked when the lands were clearlisted by them.
>
> The attached memorandum, February 6, 1970, states the defined known geologic structure is based on oil development, which is the basis for support in the KGS determination from the standpoint of the Geological Survey.

The February 6, 1970, memorandum, referenced in the letter from the State office, stated:

2/ The case file includes a copy of a letter from TXO Production Corporation (TXO), dated Apr. 7, 1982, to BLM, in which TXO states that it "plans to drill, under the terms of a Farmout Agreement with Jack Grynberg & Associates, a Tensleep test in the SW/4 NW/4 of Section 29 -- T 51 N -- R 92 W covered by Federal Lease W-44262."

Based on oil development the following described lands are within an undefined addition to the Torchlight field defined known geologic structure, effective January 12, 1970:

T. 51 N., R. 92 W., 6th P.M., Wyoming
sec. 29, SW 1/4 NW 1/4, N 1/2 SW 1/4;
sec. 30, SE 1/4 NE 1/4, NE 1/4 SE 1/4.

Lease numbers Wyoming 3219, 0173771B and 0234458A are affected by this determination.

Appellant has subsequently filed a request with the Board that it order the immediate reinstatement of the 40-acre parcel involved in this controversy since BLM has failed to substantiate its contention that the Torchlight field KGS was properly extended to embrace the SW 1/4 NW 1/4 of sec. 29 prior to lease issuance.

[1] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1976), provides that lands within any KGS of a producing oil or gas field "shall be leased to the highest responsible qualified bidder by competitive bidding." (Emphasis added.) It is well settled that when a noncompetitive oil and gas lease is issued for land within a KGS, and the facts supporting the KGS determination were known by the appropriate Departmental officials prior to issuance of the lease, the lease must be canceled to the extent it includes such land. See Skelly Oil Co. v. Morton, Civ. No. 74-411 (D.N.M. July 18, 1975); Amerada Hess Corp., 33 IBLA 293 (1978), and cases cited therein.

Appellant's first argument is that the SW 1/4 NW 1/4 of sec. 29 was erroneously included in the Torchlight field KGS. A "known geologic structure" is defined as "the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(a) (emphasis added). A determination by Survey that certain land is included within a KGS will not be disturbed in the absence of a clear and definite showing of error.

The only evidence in the record which indicates the basis for Survey's determination to include the SW 1/4 NW 1/4 of sec. 29 in the Torchlight field KGS, is the Survey memorandum of February 6, 1970, which is admittedly written in conclusory terms. On the other hand, appellant has presented evidence that at least two of the formations which underlie that land are barren of oil and gas. These formations are identified by appellant as the "main producing reservoirs" of the Torchlight field. Moreover, appellant has offered evidence that the one identified productive well in the immediate area of the subject land is within a separate oil and gas field. Thus, appellant has raised substantial issues of fact.

[2] In addition, as we have noted above, it remains unexplained why BLM posted this parcel to the January 1974 simultaneous list or why Survey clearlisted it. On the other hand, the oil and gas plat, dated December 21, 1973, a copy of which is in the case file, shows, inter alia, the SW 1/4 NW 1/4 of sec. 29 as within the geologic structure of the Torchlight field. Regardless whether appellant, or her predecessors in interest, had actual

knowledge of this notation, she is charged with constructive knowledge thereof. See Winkler v. Andrus, 614 F.2d 707 (10th Cir. 1980); O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977). Thus, appellant's estoppel argument must fall, as she cannot show an essential predicate for its invocation, that she neither knew nor ought to have known the true facts surrounding the transaction. See generally United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970); John Plutt, Jr., 53 IBLA 313 (1981).

We do believe, however, that appellant has raised a factual question as to whether the SW 1/4 NW 1/4 of sec. 29 was "presumptively productive" of oil and gas, such that it would properly have been included within the Torchlight field KGS prior to lease issuance. That question is properly resolved in an administrative hearing. Daniel A. Engelhardt, 61 IBLA 65 (1981).

The question to be decided is whether, at the time noncompetitive oil and gas lease W-44262 was issued to appellant, the SW 1/4 NW 1/4 sec. 29 was properly included in the Torchlight field KGS. Accordingly, only evidence which was actually available to Survey in its KGS determination or which pertains to the period between the date of the KGS determination, January 12, 1970, and the date of issuance of the lease, April 1, 1974, will be considered on this question. See James Muslow, Sr. (On Reconsideration), 65 IBLA 352, 355 (1982) (concurring opinion).

Following the hearing, the Administrative Law Judge shall issue an initial decision. Any party adversely affected may appeal to this Board. 3/

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case referred to the Hearings Division for assignment to an Administrative Law Judge.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

3/ We note that appellant has suggested that the lease be extended for a period equal to the time during which it was considered canceled pursuant to 30 U.S.C. §§ 184(j), 226(f) (1976). In point of fact, the timely filing of the notice of appeal stayed the effect of the decision canceling the lease. Appellant may, however, wish to file a waiver of rights under 43 CFR 3108.3(e). See Goldie Skodras, 72 IBLA 120 (1983).